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## In this chapter. . .

The rules in this chapter govern review of dispositions in delinquency cases and, when the juvenile is under age 18, in minor personal protection order proceedings. The rules in this chapter also apply in designated case proceedings in which the court has imposed a juvenile disposition following conviction; however, MCL 712A.18d(6) states that §18d, which governs commitment review hearings, “does not apply to a juvenile convicted under [the Juvenile Code] for committing a crime.” It is unclear what statute or court rule governs commitment review hearings in such cases. For an explanation of review proceedings in designated cases in which the court has delayed imposition of adult sentence and imposed a juvenile disposition, see Chapter 22. Review proceedings in “automatic waiver” cases are discussed in Chapter 22 as well.

## Section 14.1

\*See Section 10.9 for discussion of those options.

\*See Section 14.3.

\*See Section 14.4.

\*See Section 14.5.

\*See Section 14.6.

\*See Section 14.7.

\*See Section 14.7(H).

\*See Section 14.7(H).

All of the progress reports and review hearings discussed in this chapter occur after the judge or referee has chosen one or more of the dispositional options available in MCL 712A.18(1).<sup>\*</sup> These reports and hearings are as follows:

- Periodic review hearings at intervals designated by the court or when requested by a party, probation officer, or caseworker. MCR 3.945(A)(1).<sup>\*</sup>
- Dispositional review hearings required before a juvenile may be moved to a more physically restrictive placement. MCR 3.945(A)(2)(b).<sup>\*</sup>
- Dispositional review hearings every 182 days for all juveniles who have been placed into out-of-home care. MCR 3.945(A)(2)(a).<sup>\*</sup>
- Progress reports every six months for juveniles committed to private institutions. MCL 712A.24.<sup>\*</sup>
- Commitment review hearings at age 19 to determine whether the Family Division should continue jurisdiction over a court-committed juvenile until age 21. MCR 3.945(B).<sup>\*</sup>
- Dispositional review hearings every 182 days after a commitment review hearing. MCR 3.945(C)(1).<sup>\*</sup>
- Commitment review hearings at any age that are initiated by the institution to which the juvenile has been committed. MCR 3.945(C)(2).<sup>\*</sup>

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998).

### 14.1 Extension of Family Division Jurisdiction Beyond a Juvenile’s 17th Birthday

\*See Section 14.7, below.

The Family Division has jurisdiction over juveniles under 17 years old who violate a law or ordinance or commit a status offense. MCL 712A.2(a)(1)–(4). MCL 712A.2a provides for extension of Family Division jurisdiction. If the court has exercised jurisdiction under MCL 712A.2(a), the court shall

extend jurisdiction until the juvenile reaches age 19, unless the court terminates jurisdiction sooner by order. MCL 712A.2a(1). However, if the court has exercised jurisdiction over a juvenile for an enumerated serious offense and committed the juvenile to a public institution or agency, jurisdiction may be extended, following a hearing, until the juvenile reaches age 21. MCL 712A.2a(2).\*

If the court has issued a minor personal protection order under MCL 712A.2(h), the court's jurisdiction continues until the PPO expires, but any action regarding the PPO after the juvenile reaches age 18 is not governed by the procedures contained in the Juvenile Code.\*

\*See Chapter 15 for the applicable procedures.

MCL 712A.2a(5) provides that the terms “child,” “juvenile,” or “minor” when used in the Juvenile Code apply to persons under age 18 and over whom the Family Division has continuing jurisdiction. That statute states as follows:

“As used in [the Juvenile Code], “child”, “juvenile”, “minor”, or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the court under [MCL 712A.2] and over whom the court has continuing jurisdiction pursuant to [MCL 712A.2a(1) or (3)].”

**Family Division jurisdiction following a commitment to a public or private institution or agency.** MCL 712A.18c(2) provides that the court retains jurisdiction over a juvenile committed to a public institution or agency under MCL 712A.18(1)(e). MCL 712A.5 states that “[c]ommitments to a private or incorporated institution or agency do not divest the court of jurisdiction unless the juvenile has been adopted in a manner provided by law.”

**Family Division authority to amend or supplement orders of disposition.** MCL 712A.19(1) states in part that “if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in [MCL 712A.18].”

## 14.2 No Right to Jury Trial at Dispositional Review Hearings

A juvenile does not have a right to jury trial at dispositional review hearings under the Juvenile Code. “The right to a jury in a juvenile proceeding exists only at the trial.” MCR 3.911(A). No right to jury trial exists during the dispositional phase of delinquency proceedings. *In re Scruggs*, 134 Mich App 617, 618–22 (1984) (no right to jury trial exists at a probation violation hearing). See also *In re Mathers*, 371 Mich 516, 531 (1963), *In re Hubel*, 148 Mich App 696, 699 (1986), and *In re Oakes*, 53 Mich App 629, 632

(1974) (no right to jury trial exists during the dispositional phase of child protective proceedings, even where a supplemental petition is filed containing new allegations of abuse or neglect).

### **14.3 Periodic Dispositional Review Hearings**

MCR 3.945(A)(1) gives the court authority to conduct periodic hearings to review dispositional orders in juvenile delinquency cases. The court may establish the interval between such hearings, or a party may request a review hearing at any time. MCR 3.945(A)(1) sets forth the required procedures:

“The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a disposition review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.”

### **14.4 Review Hearing Before Moving a Juvenile to a More Physically Restrictive Placement**

\*See SCAO  
Form JC 57.

MCR 3.945(A)(2)(b) requires the court to conduct a review hearing before moving a juvenile to a more physically restrictive placement, unless the juvenile and his or her parent consent in a writing filed with the court.\* MCR 3.945(A)(2)(b) states as follows:

“A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of placement. A review hearing is not required if the juvenile and a parent consent to the new placement in a writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, may be released only with the approval of the court.”

## 14.5 Dispositional Review Hearings for Juveniles Placed in Out-of-Home Care

The Juvenile Code defines “foster care” to include care provided to a child in a foster family home or group home, a child caring institution, or a relative’s home pursuant to a court order. MCL 712A.13a(1)(d). MCR 3.945(A)(2)(a) provides that if the juvenile is in out-of-home care, the court shall hold a dispositional review hearing no later than every 182 days after initial disposition as provided in MCL 712A.19(2). That provision, in turn, states that:

“(2) Except as otherwise provided in this section, if a child is placed in foster care, the cause shall be reheard not more than 182 days after entry of the order of disposition. The showing shall be recorded stenographically at a hearing held by the judge or referee. If the child remains in foster care in the temporary custody of the court following the hearing, the cause shall be further reheard not more than 182 days after the hearing. In conducting the review hearing, the court shall review the performance of the child, the child’s parents, guardian, or custodian, the juvenile worker, and other persons providing assistance to the child and his or her family.”

### A. Notice of Hearing

Prior to a dispositional review hearing, the court must ensure that the following persons are notified in writing:

- the agency responsible for the care and supervision of the child, which shall advise the child of the hearing if the child is 11 years of age or older;
- the child’s foster parent or custodian;
- if parental rights have not been terminated, the child’s parents;
- a guardian of the child;
- a guardian ad litem of the child;

\*For rules applicable to “nonparent adults,” see Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse & Neglect Cases* (MJJ, 1999).

- a “nonparent adult” if he or she is required to comply with the case service plan;\*
- an elected leader of an Indian tribe (if tribal affiliation has been determined);
- the child’s attorney, the attorneys for each party, and the prosecuting attorney (if she or he has appeared);
- the child (if 11 years of age or older); and
- other persons as the court may direct. MCL 712A.19(5)(a)–(j).

## B. Information That Must Be Reviewed

MCL 712A.19(11) sets forth certain evidence that must be offered and considered at the hearing:

“An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child’s parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.”

At a review hearing, the court must review, on the record, all of the following:

\*For rules applicable to “nonparent adults,” see Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse & Neglect Cases* (MJJ, 1999).

“(a) Compliance with the case service plan with respect to services provided or offered to the child and the child’s parent, guardian, custodian, or “nonparent adult” if the “nonparent adult” is required to comply with the case service plan\* has complied with and benefited from those services.

“(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

“(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

“(d) Likely harm to the child if the child continues to be separated from the child’s parent, guardian, or custodian.

“(e) Likely harm to the child if the child is returned to the child’s parent, guardian, or custodian.” MCL 712A.19(6)(a)–(e).

After reviewing the case service plan, the court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care. MCL 712A.19(7). The court may modify any part of the case service plan, including, but not limited to, prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care, and prescribing additional actions to be taken by the parent, guardian, “nonparent adult,” or custodian to rectify such conditions. MCL 712A.19(7)(a)–(b).

### **C. Required Decisions**

The court must determine the continuing necessity and appropriateness of the child’s placement at the dispositional review hearing. The court shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order. MCL 712A.19(8).

### **D. Waiver of Hearing If Juvenile Is Returned Home**

If the requisite seven days’ notice prior to a review hearing was given to all parties, or if proper notice of hearing is waived,\* and if no party requests a hearing within the seven days, the court may issue an order without holding a review hearing permitting the agency to return the child home. MCL 712A.19(10).

## **14.6 Progress Reports Every Six Months for Juveniles Committed to Private Institutions**

When a placement is made to a private institution or agency under MCL 712A.18(1)(d), the court must require that a progress report be made at least every six months. MCL 712A.24.

## **14.7 Commitment Review Hearings to Extend Jurisdiction Until Age 21 for Juveniles Committed to Public Institutions**

If the Family Division has exercised jurisdiction over the juvenile for a criminal offense or status offense, the court shall retain jurisdiction over the juvenile until age 19, unless the juvenile is released earlier by court order, or unless the court has extended jurisdiction until age 21 for certain serious

offenses as provided in §18d of the Juvenile Code. MCL 712A.2a(1) and (2), and MCL 712A.18c(4).

**Inapplicability of §18d of the Juvenile Code to criminal convictions.** MCL 712A.18d(6) states that §18d “does not apply to a juvenile convicted under [the Juvenile Code] for committing a crime.” In designated case proceedings under the Juvenile Code, a juvenile may be convicted of a crime following plea or trial. MCL 712A.2d(7). The court may order a juvenile disposition following conviction, including commitment to a public institution or agency. MCL 712A.18(1)(n). It is unclear what statute or court rule governs commitment review hearings in such cases. However, it appears that the court may conduct review hearings in such cases at any time during the period when the court has jurisdiction over the juvenile.

#### **A. Offenses Allowing Extension of Jurisdiction Until Age 21**

MCL 712A.2a(2) and MCL 712A.18d(1) provide that the court may extend jurisdiction until age 21 if the juvenile is committed to a public institution under MCL 712A.18(1)(e) for an offense that would be a violation or attempted violation of any of the following:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to do great bodily harm less than murder, MCL 750.84;
- assault with intent to maim, MCL 750.86;
- assault with intent to rob while unarmed, MCL 750.88;
- assault with intent to rob while armed, MCL 750.89;
- attempted murder, MCL 750.91;
- first-degree home invasion, MCL 750.110a(2);
- escape or attempted escape from a juvenile facility, MCL 750.186a;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- second-degree criminal sexual conduct, MCL 750.520c;
- third-degree criminal sexual conduct, MCL 750.520d;



- assault with intent to commit criminal sexual conduct, MCL 750.520g;
- armed robbery, MCL 750.529;
- unarmed robbery, MCL 750.530;
- bank, safe, or vault robbery, MCL 750.531;
- carjacking, MCL 750.529a; and
- possession of, or manufacture, delivery, or possession with intent to manufacture or deliver, 650 grams or more of any Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i) and MCL 333.7403(2)(a)(i).

## **B. Time Requirements for Hearings**

“Unless adjourned for good cause, a commitment review hearing must be held as near as possible to, but before, the juvenile’s 19th birthday.” MCR 3.945(B)(1)(a).

## **C. Notice Requirements for Hearings**

Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and the juvenile’s parent, guardian, or legal custodian if his or her address or whereabouts are known, at least 14 days prior to the hearing. MCR 3.945(B)(1)(b) and MCL 712A.18d(4).\*

The notice must clearly indicate that the court may extend jurisdiction over the juvenile until age 21, and advise the juvenile and his or her parent, guardian, or legal custodian that the juvenile has the right to an attorney. MCR 3.945(B)(1)(b) and MCL 712A.18d(4).

## **D. Right to Counsel at Hearings**

The court must appoint an attorney to represent the juvenile at the required review hearing unless legal counsel has been retained. MCR 3.945(B)(2) and MCL 712A.18d(4). The court may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile’s support, or both, if the persons to be assessed are financially able to comply. MCL 712A.18d(4).

## **E. Factors to Consider at Hearings**

The purpose of the required commitment review hearing is to determine whether the juvenile has been rehabilitated or still presents a serious risk to public safety.\* If the court determines at the required review hearing that the

\*See Section 2.12 for a discussion of required parental attendance at hearings after the court has taken jurisdiction over the juvenile.

\*See SCAO Form JC 57.

juvenile has not been rehabilitated *or* that the juvenile does present a serious risk to public safety, jurisdiction over the juvenile shall be continued until the juvenile reaches age 21. MCL 712A.18d(1).

In making these determinations, the court must consider all of the following factors:

“(a) The extent and nature of the juvenile’s participation in education, counseling, or work programs.

“(b) The juvenile’s willingness to accept responsibility for prior behavior.

“(c) The juvenile’s behavior in his or her current placement.

“(d) The juvenile’s prior record and character and his or her physical and mental maturity.

“(e) The juvenile’s potential for violent conduct as demonstrated by prior behavior.

“(f) The recommendations of the institution, agency, or facility charged with the child’s care for the juvenile’s release or continued custody.

“(g) Other information the prosecuting attorney or juvenile may submit.” MCL 712A.18d(1)(a)–(g). MCR 3.945(B)(4)(a)–(g) contain substantially similar criteria.

## **F. Burden of Proof at Hearings**

The juvenile has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety. MCR 3.945(B)(4) and MCL 712A.18d(2).

## **G. Evidence and Reports at Hearings**

MCR 3.945(B)(3) provides that the Michigan Rules of Evidence, other than rules governing privileges, do not apply.

MCL 712A.18d(5) provides that the institution charged with the care of the juvenile shall prepare for the court commitment reports as provided in MCL 803.225 of the Juvenile Facilities Act. See also MCR 3.945(B)(3). These reports must contain a description of:

“(a) The services and programs currently being utilized by, or offered to, the juvenile and the juvenile’s participation in those services and programs.

“(b) Where the juvenile currently resides and the juvenile’s behavior in his or her current placement.

“(c) The juvenile’s efforts toward rehabilitation.

“(d) Recommendations for the juvenile’s release or continued custody.” MCL 803.225(1)(a)–(d).

MCR 3.945(B)(3) provides that the court must consider the information in a commitment report when deciding whether to extend jurisdiction. In addition, the court may also consider the annual progress reports created pursuant to MCL 803.223. MCL 803.225(3).

## **H. Subsequent Review Hearings**

If the court extends jurisdiction over the juvenile until the juvenile turns age 21, the court must hold a dispositional review hearing every 182 days after the hearing to extend jurisdiction if the juvenile is placed outside the home. MCR 3.945(C)(1). In addition, “[i]f the institution, agency, or facility to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.” MCR 3.945(C)(2).

## **I. Release of Juvenile at Age 21**

If the court continues jurisdiction over the juvenile, the juvenile shall be automatically discharged upon reaching the age of 21. MCL 712A.18d(1) and MCL 803.307(1)(a) and (2). See also MCL 712A.5, which provides that a commitment to a public institution is invalid after the juvenile reaches the maximum jurisdictional age under MCL 712A.2a.

## 14.8 Requirements of the Crime Victim's Rights Act

\*Prior to June 1, 2001, the agency was only required to notify the victim when the juvenile was moved from a secure to nonsecure facility. It is the policy of the FIA to notify victims of planned home visits by the juvenile in both delinquency and "automatic waiver" cases. See *Services Manual, Children & Youth*, Item 813.2.

### A. Notice of Juvenile's Transfer From One Facility to Another

Upon written request by the victim in a juvenile delinquency proceeding, the agency to which a juvenile has been committed must make a "good-faith effort" to notify the victim before the juvenile is transferred from one juvenile facility to another. MCL 780.798(1)(b).<sup>\*</sup> If the agency to which a juvenile has been committed is unsuccessful in notifying the victim before the transfer, it must notify the victim as soon as possible after the transfer occurs. MCL 780.798(2).

### B. Notice of Review Hearings and the Right to Make a Statement

After a juvenile has been committed to an institution for an offense, the crime victim is entitled to request that he or she be notified of review hearings conducted in juvenile delinquency cases and in designated case proceedings in which the juvenile was not sentenced to imprisonment at the initial sentencing or dispositional hearing. If the victim requests, the prosecuting attorney must give the victim notice of a review hearing conducted pursuant to §18 of the Juvenile Code. MCL 780.798(9). "The victim has the right to make a statement at the hearing or submit a written statement for use at the hearing, or both." *Id.*

### C. Notice of Juvenile's Dismissal From Court Jurisdiction or Discharge From Commitment to Juvenile Agency

In juvenile delinquency and designated cases, if the victim requests in writing, the court or the agency to which a juvenile was committed must provide the victim notice of the juvenile's dismissal or discharge. MCL 780.798(1)(a) requires the court, Family Independence Agency, or county juvenile agency, as applicable, to make a "good-faith effort" to notify the victim before "[t]he juvenile is dismissed from court jurisdiction or discharged from commitment to the family independence agency or county juvenile agency." If the court, FIA, or county juvenile agency is unsuccessful in notifying the victim before the dismissal or discharge, it must notify the victim as soon as possible after the dismissal or discharge occurs. MCL 780.798(2).

## 14.9 Recording Dispositional Review Hearings

MCR 3.925(B) states that "[a] record of all hearings must be made." That subrule also requires that a record of all proceedings on the formal calendar be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. "Formal calendar" means judicial proceedings other than a preliminary inquiry or a preliminary hearing. MCR 3.903(A)(6). Thus, a record of a review hearing

must be made. See also MCL 712A.19(2) (“rehearing” or “review hearing” required under this provision must be recorded stenographically).